

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

DENIAL OF REQUEST FOR CONTESTED CASE HEARING BY JANET MANDRELL

Janet Mandrell submitted a written petition for a contested case hearing concerning the Board of Land and Natural Resources May 23, 2008, decision on Agenda Item J-1, Request for Board Approval of the Proposed Parking Plan for the Ala Wai Small Boat Harbor. We request that the Board deny the petition for a contested case hearing based on a lack of standing.

BACKGROUND

On May 23, 2008, DOBOR brought a request to the Board for final approval of DOBOR's proposed parking plan for the Ala Wai Small Boat Harbor. After the Board approved the request and adjourned for a break, Petitioner Janet Mandrell submitted a written request for a contested case hearing which is attached to this submittal as Exhibit "A".

A contested case hearing is one where the "legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." HRS §91-1(5). A contested case is "required by law" if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if mandated by due process. See Bush v. Hawaiian Homes Comm'n, 76 Haw. 128, 134, 136, 870 P.2d 1272, 1278, 1280 (1994). There is no specific statute or rule calling for a contested case in the context of approving a parking plan, so Petitioner apparently relies on the due process clauses of the state or federal constitutions or both as the basis for a contested case. Hawaii's courts have developed a two-step analysis to determine if a claimant is entitled to a due process hearing. First, the court looks at whether the particular interest is "property" within the meaning of the due process clauses, and second, the court determines what specific procedures are required to protect the interest asserted. Alejado v. City & County of Honolulu, 89 Haw. 221, 226-27, 971 P.3d 310-315-16 (Haw. App. 199)

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Id., 89 Haw. at 227, 971 P.2d at 316 (citing Bd. of Regents v. Roth, 408 U.S. 564 (1972)). Petitioner asserts a property interest as a slip and parking permit holder, and as a member of the Hawaii Yacht Club which is located in the harbor. The parking plan does not affect Petitioner's status as a slip and parking permit holder. To the extent

Petitioner claims standing through the Hawaii Yacht Club, she has not shown authority to step into the Hawaii Yacht Club's shoes.

Additionally, the approval of a parking plan is similar to rule-making in that it is more legislative than adjudicative in nature. "Rule-making is an agency action governing the future conduct of either of groups of persons or of a single individual; it is essentially legislative in nature, not only because it operates in the future, but also because it is concerned largely with considerations of policy." In re Hawaiian Electric Co., Inc., 81 Hawa'i 459, 466, 918 P.2d 561, 568 (1996). "Adjudication, conversely, is concerned with the determination of past and present rights and liabilities." Id. "What distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it; while adjudication operates concretely upon individuals in their individual capacity." Id., 81 Hawai'i at 466-7, 918 P.2d at 568-9.

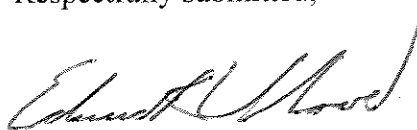
The approval of a parking plan does not affect the legal rights, duties or privileges of individuals but, instead, is a vehicle for legislative-like policy making by an administrative agency.

Based on the above, DOBOR asserts that Petitioner is not entitled to a contested case hearing.

#### RECOMMENDATION

That the Board deny the petition for a contested case hearing filed by Janet Mandrell based on lack of standing.

Respectfully submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen  
Chairperson

## BOARD OF LAND AND NATURAL RESOURCES

## PETITION FOR A CONTESTED CASE HEARING

1. **Name:** Janet Mandrell      **Phone:** (808) 723-1947      **Fax:** N/A  
 2. **Address:** 1741 Ala Moana Blvd, #4, Honolulu, HI  
 3. **Email:** makaisociety@bigfoot.com
4. **Attorney (if any)**      N/A      **Phone** N/A      **Fax:** N/A  
 5. **Address:**      N/A  
     **Email Address:**      N/A
6. **Subject Matter:** Land Board agenda item J-1 regarding Ala Wai Harbor parking plan  
 7. **Date of Public Hearing / Board Meeting:** May 23, 2008
8. **Legal authority under which hearing, proceeding or action is being made:**  
 a. HRS Chapters 91, 343, 205A  
 b. Hawaii State Constitution Bill of Rights  
 c. DLNR HARs 13-1-29 and related sections  
 d. case law related to decisions of the Courts of the State of Hawaii
9. **Nature of your specific legal interest in the above matter, including tax map key of property affected:** Property and recreational interest as slip and parking permit holder in Ala Wai Small Boat Harbor, Honolulu, HI (TMK 2-3-037: 012) as an individual and as a member of a specific class or group holding a DLNR / DOBOR slip permit and automobile parking permit, and a member of the Hawaii Yacht Club
10. **The specific disagreement, denial or grievance with the above matter:** The Division of Boating and Ocean Recreation (DOBOR) distorted and exploited the public participation process and established planning procedures under the disguise of addressing complaints regarding parking problems in small boat harbors, particularly Ala Wai Small Boat Harbor to create new revenue resources.
11. **Outline of the specific issues to be raised:** Established public planning procedures, the public participation process, environmental assessment requirements, and equal treatment of citizens
12. **Outline of the basic facts:** At the Land Board meeting on Jan 25<sup>th</sup>, DOBOR, at the direction of the Land Board, was required to seek stakeholder input to create a parking plan for Ala Wai Harbor. DOBOR hired professional facilitators to conduct / record three public hearings during April of 2008. During the 1<sup>st</sup> public hearing stakeholders requested the necessary information including financial, identified the criteria to set a framework for analysis of plans suggested from stakeholders, attempted to identify and clarify problems, issues and their frequency. At the 2<sup>nd</sup> meeting, some of information was requested was made available, except financial information was minimal and provided verbally was a question was asked directly. At the 3<sup>rd</sup> meeting, DOBOR presented 3 scenarios in which each were framed within a privatization via a lease. None of the other stakeholder alternative plans were on the table for discussion. However a coalition of surf, paddling and beach user groups submitted a plan for continuing with the 549 free parking spaces (i.e. no change). Laura Thielen attended and closed the 3<sup>rd</sup> meeting. She said DOBOR would

present a final plan simultaneously to the Land Board and the public for their approval. DOBOR mailed a survey during the first of May with a return deadline of May 13<sup>th</sup> - an extraordinary short time.

At the Land Board meeting, DOBOR presented it's privatization plan for parking which included a range of pricing for parking which favored certain user groups. No alternative plans were presented. A petition signed by 116 Ala Wai permittees (slipholders) opposing the DOBOR plan presented May 23<sup>rd</sup>. This permittee petition plus the overwhelming testimony previously submitted outlined weaknesses and flaws in DOBOR actions and fundamentally opposed DOBOR's parking plan.

13. **The relief or remedy to which you seek or deem yourself entitled:** Rescind the Land Board approval of DOBOR's plan. Establish a fair and balanced stakeholder council to create a comprehensive Master facility plan to revitalize the Ala Wai Harbor, which would address funding and technical issues using revenue sources from the property and other funding entites.

**The above-named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above.**

Janet A. Mandrell

Dated: 2 June 08